IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.12.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

Habeas Corpus Petition No.1350 of 2007

Oli @ Gnanasekaran .. Petitioner

Vs

1. The State of Tamil Nadu,
   rep. by its Secretary to Govt.,
   Prohibition and Excise Dept.,
   Fort St. George, Chennai.

2. The Commissioner of Police,
   Greater Chennai,
   Egmore, Chennai. .. Respondents

Petition filed under Article 226 of the Constitution of India for issue of Writ of Habeas Corpus as stated therein.

For Petitioner : Mr.R.Thanjan
For Respondents: Mr.P.Kumaresan
Additional Public Prosecutor

O R D E R

(Order of the Court was made by P.D.DINAKARAN,J.)

The second respondent herein clamped an order of detention as against the petitioner, as the said authority arrived at the subjective satisfaction that the said detenu is a Goonda and has to be detained under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Officers, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982).

2. Challenging the abovesaid detention, the detenu himself, who is now confined at Central Prison, Puzhal, Chennai, has come forward with the present Habeas Corpus Petition seeking a writ of habeas corpus to call for the records pertaining to the detention order

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passed against him by the second respondent in proceedings No.333/BDFGISSV/2007, dated 16.7.2007, set aside the same and to direct the respondents to produce him before this Court and set him at liberty.

3.1. The order of detention dated 16.7.2007 was passed based on the ground case registered in Crime No.483 of 2007 on the file of T-1 Ambattur Police Station for alleged commission of offences under Sections 341, 323, 336, 392, 397, 307 and 506(ii) IPC, complaint of which was lodged by one Kumaresan. According to the complainant, on 24.6.2007 at 12.00 noon, while he was walking along Ambattur CTH Road, the detenu along with his associates wrongfully restrained and threatened him by showing aruval and demanded to part with his money and when the same was refused by the complainant, they assaulted him and took away Rs.2500/- cash and also two cell phones from his pocket. On hearing hue and cry of the complainant, public came to his rescue, which went in vain and the detenu and his associates made their good escape by threatening them at the point of aruval and also pelted stones on the public, which created panic and terror situation in the area. During investigation, the detenu was arrested and sent for judicial remand.

3.2. The second respondent, taking note of the above ground case and finding that the detenu came to the adverse notice of the authorities in two cases viz., Crime Nos. 473/2007 and 481/2007 on the file of T.1 Ambattur Police Station for the offences punishable under Sections 365, 395 r/2 397, 392 and 506(2) IPC, having satisfied that there is compelling necessity to detain the detenu in order to prevent him from indulging in such activities, which are prejudicial to the maintenance of public order, ordered his detention dubbing him as a Goonda.

4. The learned counsel for the petitioner challenges the order of detention on the ground of non application of mind on the part of the detaining authority while passing the order of detention. According to him, the detaining authority has stated in the grounds of detention that the detenu had moved bail applications before the District Principal Sessions Court, Thiruvallur, in Crl.M.P.Nos.1699/2007 for Cr.No.473/2007, 1700/2007 for 481/2007 and 1697/2007 for 483/2007 and they were dismissed and that no further bail application was moved. But, in the special report submitted by the sponsoring authority found at page 87 of the paper book furnished to the detenu, it is stated that the detenu had moved only two bail applications viz., Crl.M.P.Nos.1697 and 1699 of 2007 and they were dismissed on 9.7.2007 and there is no mention about

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the filing of Crl.M.P.No.1700 of 2007 for Crime No.481 of 2007. That apart, even though the order of dismissal in Crl.M.P.No.1700 of 2007 was relied upon in the grounds of detention, the copy of the same was not furnished to the detenu and in the absence of furnishing copy of dismissal order in such bail application, the detenu was deprived of his opportunity to make his effective representation and hence the order of detention gets vitiated.

5. On perusal of the grounds of detention, we find that in para 4, the detaining authority has stated that the detenu had moved bail applications before the District Principal Sessions Court, Thiruvallur, in Crl.M.P. Nos.1699/2007, 1700/2007 and 1697/2007 and they were dismissed and that no further bail application was moved. But, in the special report submitted by the sponsoring authority, it is stated that the detenu had moved only Crl.M.P.Nos.1697 and 1699 of 2007, they were dismissed and he was not enlarged on bail and no bail application is pending before the Court. Hence, we are convinced that there is non-application of mind on the part of the detaining authority and that the non-furnishing of the dismissal order in Crl.M.P.No.1700 of 2007 to the detenu, would obviously cause prejudice to the detenu while making his effective representation seeking to set aside the order of detention. We are, therefore, inclined to allow this Habeas Corpus Petition.

In the result, the order of detention is set aside and the Habeas Corpus Petition is allowed. The detenu is directed to be set at liberty forthwith unless his presence is required in connection with any other case.

ATR

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

To:

1. The Secretary to Government
   of Tamil Nadu, Prohibition and
   Excise Department, Fort St. George,
   Chennai 600 009.

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2. The Commissioner of Police,
   Greater Chennai, Egmore, Chennai.

3. The Superintendent
   Central Prison, Puzhal, Chennai.

4. The Public Prosecutor,
   High Court, Madras.

5. The Joint Secretary to Government,
   Public (Law and Order) Department,
   Chennai-9

1 cc to Mr.R.Thanjan, Advocate, SR.71810/07

rsn (co)

dv/20.12.

H.C.P.No.1350 of 2007

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